

**Tax Type:** Motor Fuel Use Tax  
**Issue:** Dyed/Undyed Diesel Fuel (Off Road Usage)

THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF ILLINOIS	)	
	)	<b>Docket # 00-ST-0000</b>
<b>v.</b>	)	<b>Acct # 00-00000</b>
	)	<b>NTL # 00-000000 0</b>
<i>JANE DOE</i>	)	<b>NTL # 00-000000 0</b>
	)	
<b>Taxpayer</b>	)	

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; *Jane Doe, pro se.*

The Department of Revenue (“Department”) issued two Notices of Penalty for Dyed Diesel Fuel Violation (“Notices”) to *Jane Doe* (“taxpayer”). Each Notice alleged that the taxpayer operated a licensed motor vehicle with dyed diesel fuel in its tank. The taxpayer timely protested the Notices. A hearing was held during which the taxpayer argued that the trucks were not used on the road with the dyed fuel in their tanks so the penalties should not be imposed. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On February 24, 2005, the taxpayer had two licensed trucks on its premises with dyed diesel fuel in their tanks. (Dept. Ex. #1; Tr. p. 12)

2. The taxpayer had cancelled the insurance on the trucks effective January 3, 2005. (Taxpayer Ex. #1; Tr. pp. 6, 11)

3. From January 1, 2005 to March 31, 2005, the taxpayer's employees received unemployment compensation because they had been laid off from the taxpayer's business. (Taxpayer Ex. #2; Tr. p. 6)

4. On April 1, 2005, the Department issued two Notices to the taxpayer. The first one shows a penalty due of \$2,500 for having dyed diesel fuel in the tank of a licensed motor vehicle on February 24, 2005. The second one shows a penalty due of \$5,000 for having dyed diesel fuel in the tank of a second licensed motor vehicle on February 24, 2005. The Notices were admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #1).

CONCLUSIONS OF LAW:

Paragraph 15 of section 15 of the Motor Fuel Tax Act ("Act") (35 ILCS 505/1 *et seq.*), provides in part as follows:

"15. If a motor vehicle required to be registered for highway purposes is found to have dyed diesel fuel within the ordinary fuel tanks attached to the motor vehicle \* \* \*, the operator shall pay the following penalty:

First occurrence.....	\$2,500
Second and each occurrence thereafter.....	\$5,000

(35 ILCS 505/15). The taxpayer contends that these penalties should not be imposed in this case. She stated that her dad had been cleaning out the barrels of her cement trucks, and fuel is needed to turn the barrels of the trucks. When he ran out of fuel, he

inadvertently used the dyed fuel for the trucks. The taxpayer argues that she was unaware that the dyed fuel was in the tanks. Also, the taxpayer provided a copy of her insurance cancellation showing that the vehicles were not insured at the time that they were tested. In addition, her employees were receiving unemployment compensation because her business was closed during that time period. The taxpayer claims that because the trucks were not insured and were not being used on the highway at that time, the penalties should be withdrawn.

The statute indicates that “a motor vehicle required to be registered for highway purposes” cannot have dyed diesel fuel in its tank. Although the trucks may not have been used on the highway at that time, the taxpayer admitted that they were licensed for use on the highway. They were registered with Illinois licenses. The fact that the taxpayer may not have known that the dyed fuel was in the tanks is not a basis, under the statute, for abating the penalties. Because the trucks were required to be registered for highway purposes, the penalties must be upheld.

Linda Olivero  
Administrative Law Judge

Enter: January 6, 2006